

**Judge Derman**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
FAIRSTAR HEAVY TRANSPORT NV,

Plaintiff,

- against -

C&M GROUP LIMITED and C&M MARINE  
SERVICES USA, INC.,

Defendants.  
-----X

08 Civ. 08  
08 CIV 6889

**VERIFIED COMPLAINT**

Plaintiff, FAIRSTAR HEAVY TRANSPORT NV, (hereinafter referred to as "Plaintiff"),  
by and through its attorneys, Lennon, Murphy & Lennon, LLC, as and for its Verified Complaint  
against the Defendants C&M GROUP LIMITED and C&M MARINE SERVICES USA, INC.,  
(hereinafter referred to collectively as "Defendants") alleges, upon information and belief, as  
follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333.
2. At all times material to this action, Plaintiff was, and still is, a foreign corporation, or other business entity organized and existing under foreign law with a principal place of business in Rotterdam, The Netherlands.
3. Upon information and belief, Defendant C&M GROUP LIMITED was, and still is, a foreign corporation, or other business entity organized and existing under foreign law with a principal place of business in Aberdeen, Scotland, United Kingdom.

4. Upon information and belief, Defendant C&M MARINE SERVICES USA, INC., was, and still is, a United States corporation, or other business entity organized and existing under the laws of one of the states of the United States with a principal place of business in Erath, LA and/or Houston, Texas.

5. As evidenced by a charter party dated March 20, 2008 on the "Heavycon" charter party form with C&M GROUP LIMITED as the named charterer (attached as Exhibit 1) and a cargo receipt on the "Heavycon Receipt" form with C&M MARINE SERVICES USA, INC. as the named charterer (attached as Exhibit 2), Plaintiff chartered to the Defendants the M/V FJORD, a self-propelled, semi-submersible heavy transport vessel, for the carriage of Defendants' ice breaking vessel, M/V ICE MAIDEN, from Mobile, AL to the A&P Tyne yard in the United Kingdom.

6. Plaintiff duly performed its obligations under the charter and carried the ice breaking vessel ICE MAIDEN from the United States, across the Atlantic Ocean, and safely delivered same to the A&P yard in the United Kingdom.

7. Notwithstanding Plaintiff's full performance of its contractual obligations, Defendants have breached their obligations under the terms of the charter party and cargo receipt by refusing to pay to Plaintiff certain amounts that are due and owing in the principal amount of \$501,447. Defendants have not disputed that this amount is due but have nevertheless illegally withheld payment. Plaintiff's principal damages, in the amount of \$501,447, were incurred as a result of Defendants' breach as more specifically itemized below.

8. Under the contract, the demurrage rate, *i.e.*, the rate for delays in loading and/or discharging cargo incurred at the load and/or discharge ports, is \$75,000 per day. As set forth in Plaintiff's Invoice dated June 30, 2008 (attached as Exhibit 3), the M/V FJORD was on

demurrage for 5 days and 7 hours, of which 2 days and 5 hours was incurred in the United States and 3 days and 2 hours was incurred in Europe. As such, Plaintiff's demurrage claim is calculated as 5 days and 7 hours multiplied by \$75,000 per day for a total of \$396,875.

9. Additionally, as set forth in Plaintiff's Invoice attached as Exhibit 3, Plaintiff incurred project related costs, e.g., extra insurance costs, weather routing service costs, stand-by boat costs, all arranged and paid for by Plaintiff for and on behalf of Defendants, in the amount of \$46,972.

10. Further, as set forth in Plaintiff's Invoice attached as Exhibit 3, per Clause 15 of the charter party entitled "Bunker Escalation" Defendants are also liable to Plaintiff in the amount of \$57,600 for fuel price differential. Specifically, Clause 15 provides that "This contract is concluded on the basis of the price per ton for bunker oil stated in Box 22 [USD 479 per metric ton] in force on the date of this contract. If the price actually paid by the Owners for the stated quantity of bunker oil [3,600 mt] should be higher, the difference shall be paid by the Charterers to the Owners." In this case the price actually paid by Plaintiff, *i.e.*, \$495/mt, was higher than the price stated in the contract, *i.e.*, \$479/mt. Thus the fuel cost differential is \$16/mt multiplied by 3600 mt for a total of \$57,600.

11. Pursuant to the charter party and the cargo receipt that incorporated the terms of the charter party, all disputes must to be submitted to the High Court of Justice in London, England with English Law to apply. Plaintiff is preparing to commence its action against Defendants in London. In this regard, while Plaintiff has not received any notice from Defendants or any judicial body, the recently updated website of C&M GROUP LIMITED indicates that it is "in administration," which is a procedure under the insolvency laws of the United Kingdom that functions as a rescue mechanism for troubled companies and allows them

to carry on running their business. If true, this fact would likely impact *inter alia* the timing of Plaintiff's substantive claim against C&M GROUP LIMITED in the High Court of Justice. There is no indication that the American company, C&M MARINE SERVICES USA, INC., is similarly situated.

12. Interest, costs and attorneys' fees are routinely awarded to the prevailing party under English Law. As best as can now be estimated, Plaintiff expects to recover the following amounts in the London litigation in respect of its claims against Defendants:

A.	Principal claim:	\$501,447;
B.	Interest on principal claim at 7% compounded quarterly for three years:	\$116,055;
C.	Attorneys' fees and costs of litigation:	\$200,000;
<b>Total:</b>		<b>\$817,502.</b>

13. The Defendants cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure. *See Murphy Affidavit attached as Exhibit 4.* However, upon information and belief, Defendants have, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of garnishees within the District which are believed to be due and owing to the Defendants.

14. The Plaintiff seeks an order from this Court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching, *inter alia*, any assets of the Defendants held by any garnishees within the District for the purpose of obtaining personal jurisdiction over the Defendants and to secure the Plaintiff's claim as described above.

**WHEREFORE**, Plaintiff prays:

A. That process in due form of law issue against the Defendants, citing them to appear and answer under oath all and singular the matters alleged in the Complaint failing which default judgment be entered against them;

B. That since the Defendants cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds up to the amount of **\$817,502** belonging to, due or being transferred to, from, or for the benefit of the Defendants, including but not limited to such property as may be held, received or transferred in Defendants' name or as may be held, received or transferred for its benefit at, moving through, or within the possession, custody or control of banking/financial institutions and/or other institutions or such other garnishees to be named, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

C. That this Court recognize and confirm any English judgment(s) rendered on the claims set forth herein as a Judgment of this Court.

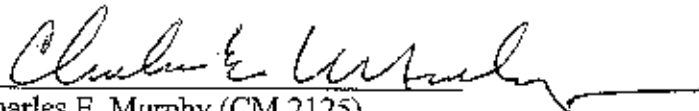
D. That this Court retain jurisdiction over this matter through the entry of any Judgment associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;

E. That this Court award Plaintiff its attorney's fees and costs of this action; and

F. That the Plaintiff have such other, further and different relief as the Court may deem just and proper.

July 31, 2008  
New York, NY

The Plaintiff,  
FAIRSTAR HEAVY TRANSPORT NV,

By:   
Charles E. Murphy (CM 2125)  
LENNON, MURPHY & LENNON, LLC  
The GrayBar Building  
420 Lexington Ave., Suite 300  
New York, NY 10170  
(212) 490-6050 – phone  
(212) 490-6070 – fax  
cem@lenmur.com

**ATTORNEY'S VERIFICATION**

State of New York     )  
                                      )     ss.:     New York City  
County of New York    )

1.     My name is Charles E. Murphy.

2.     I am over 18 years of age, of sound mind, capable of making this

Verification, and fully competent to testify to all matters stated herein.

3.     I am an attorney in the firm of Lennon, Murphy & Lennon, LLC, attorneys for the  
Plaintiff.

4.     I have read the foregoing Verified Complaint and know the contents  
thereof and believe the same to be true and accurate to the best of my knowledge, information  
and belief.

5.     The reason why this Verification is being made by the deponent and not  
by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now  
within this District.

6.     The source of my knowledge and the grounds for my belief are the  
statements made, and the documents and information received from, the Plaintiff and agents  
and/or representatives of the Plaintiff.


7.     I am authorized to make this Verification on behalf of the Plaintiff.

Dated:     July 31, 2008  
           New York, NY

  
Charles E. Murphy

## EXHIBIT 1



1. Place and date of Contract ROTTERDAM, 20 <sup>TH</sup> MARCH 2008 CONTRACT NUMBER: 0356 G	THE BALTIK AND INTERNATIONAL MARITIME COUNCIL STANDARD TRANSPORTATION CONTRACT FOR HEAVY AND VOLUMINOUS CARGOES  CODE NAME: "HEAVYCON"  PART I
2. Owners/place of business (CL 2.1) FAIRSTAR HEAVY TRANSPORT NV 6 <sup>TH</sup> FLOOR SUITE E6, 170 CONRADSTRAAT 10 3013 AP ROTTERDAM THE NETHERLANDS	3. Charterers/place of business (CL 2.3) GAM GROUP LIMITED 6-19 HOLLAND STREET ABERDEEN AB26 3UJ ABERDEENSHIRE SCOTLAND
4. Vessel (name, type and other particulars; also description of Owners' equipment) (CL 2.1 & 4.2) MV FJORD, SELF PROPELLED, SEMI SUBMERSIBLE HEAVY TRANSPORT VESSEL,	
5. Cargo (if description of cargo; indicate whether full and complete cargo or part cargo; also state minimum/maximum weight of cargo) (CL 2.1 & 10.5) PARTIALLY CONVERTED VESSEL MV ICE MAIDEN, WITH UNSEALED OPENINGS IN DECK BOTTOM TOGETHER WITH OTHER ITEMS, BLOCKS, ETC BELONGING TO THE VESSEL UP TO FJORD'S CAPACITY, ESTIMATED WEIGHT APPROX 12000 MT; FULL AND COMPLETE CARGO. FINAL CARGO DETAILS TO BE CONFIRMED BY CHARTERERS BY LATEST APRIL 11 <sup>TH</sup> , 2008	
6. Loading port(s) (CL 2.1) MOBILE, ALABAMA, USA	7. Discharging port(s) and intended route from loading port to discharging port (CL 2.1 & 3.2) UK - BELFAST-TYNE RANGE TO BE DECLARED BY APRIL 11, 2008; MOST DIRECT AND SAFE ROUTE USING APPROPRIATE WEATHER ROUTING
8. Loading method(s) (indicate alternative(s): (a), (b) or (c), as agreed) (CL 4.1) FLOAT ON OF ICE MAIDEN (c), LIFT ON ADDITIONAL CARGO (b) BY CHARTERERS	9. Discharging method(s) (indicate alternative(s): (a), (b) or (c), as agreed) (CL 4.6) FLOAT OFF ICE MAIDEN (c), LIFT OFF ADDITIONAL CARGO (b) BY CHARTERERS
10. First layday (CL 8.1) APRIL 28, 2008	11. Canceling date (CL 8.1) MAY 2, 2008
12. Notices for loading to be given to (CL 8.1 & 9.2) CHARTERERS	13. Notices for discharging (state interval periods and to whom to be given) (CL 8.2 & 9.3). ONLY NOON POSITIONS, TOGETHER WITH UPDATED ETA, TO BE GIVEN TO CHARTERERS
14. Marine Surveyor(s) and date for transportation approval (CL 10.1 & 14.4) BIM MARINE AND OFFSHORE SURVEYS	
15. Freight (CL 11) USD \$,350,000 (FIVE MILLION THREE HUNDRED AND FIFTY THOUSAND UNITED STATES DOLLARS) 10% ON SIGNING CONTRACT 40% ON ISSUANCE OF NOR AFTER ARRIVAL 50% 2 DAYS PRIOR TO ARRIVAL AT DISCHARGE PORT	16. Freight and demurrage, etc. payment (currency and where payable; also state owner's bank account) (CL 11)  UNITED STATES DOLLARS  HSB NORDBANK GERHART-HAUPTMANN PLATZ 60 20085 HAMBURG, GERMANY  TEL: +49 40 3333 10453 FAX: +49 40 3333 34307 SWIFT ADDRESS: HSNDE33 IN FAVOUR OF FAIRSTAR HEAVY TRANSPORT NV ACCOUNT NO. 1700368277 IBAN: DE 22 1000 0000 1100 3082 77
17. Free time for loading/discharging and canal transit (if applicable) (state total number of working hours) (CL 12.1 & 14.1)  4 DAYS FOR LOADING AND SEA FASTENING 3 DAYS FOR RELEASE AND DISCHARGING	18. Demurrage rate per day (CL 12.2) USD 15,000 PRO RATA
19. Mobilisation charge (if agreed, state lump sum amount) (CL 13.1) NA	20. Demobilisation charge (if agreed, state lump sum amount) (CL 13.2) NA
21. Canal transit costs (if any) limited to (CL 14.2) NA	22. Price per ton of bunker oil (CL 15) USD 478 PER MT, IFO 380, BASIS FIXED CONSUMPTION 2600 MT

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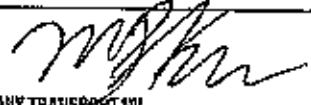
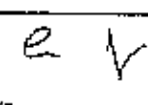
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(continued) **"HEAVYCON" STANDARD CONTRACT FOR HEAVY AND VOLUMINOUS CARGOES** **PART I**

<p>23. Termination Fee(s) (state amount(s) if agreed) (Cl. 20.1. &amp; 20.2.)</p> <p>50% OF THE FREIGHT AFTER SIGNING CONTRACT AND BEFORE DEPARTURE OF THE VESSEL FROM MALTA</p> <p>75% OF THE FREIGHT AS FROM DEPARTURE OF THE VESSEL FROM MALTA</p> <p>100% OF THE FREIGHT AFTER VESSEL ARRIVAL AT MOBILE</p>	<p>24. Liability for cargo (state whether: B/L of Lading or Cargo Receipt) (Cl. 21.1. or 21.2.)</p> <p>CARGO RECEIPT</p>
<p>26. Brokerage and to whom payable (Cl. 31)</p> <p>5% PAYABLE TO QUINTUS SHIPPING LIMITED, BISHOPS STORTFORD, HERTS, UK</p>	<p>25. General average shall be adjusted/settled at (Cl. 25)</p> <p>LONDON, UNITED KINGDOM</p> <p>27. Law and arbitration (state 32.1., 32.2. or 32.3. of Cl. 32, as agreed; if 32.3. agreed state place of arbitration) (if Box 27 not filled in 32.1. shall apply) (Cl. 32)</p> <p>ENGLISH LAW, LONDON</p>
<p>28. Numbers of additional clauses covering special provisions, if agreed</p> <p>4</p>	

It is mutually agreed that this Contract shall be performed subject to the conditions contained in the Contract consisting of PART I including additional clauses, if any agreed and stated in Box 28 and PART II. In the event of a conflict of conditions, the provisions of PART I and any additional clauses shall prevail over those of PART II to the extent of such conflict but no further.

<p>Signature (Owner)</p>  <p>FAIRSTAR HEAVY TRANSPORT NV</p>	<p>Signature (Charterer)</p>  <p>C&amp;M GROUP LIMITED</p> <p>20/3/08</p>
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MARIO KERSENS  
SALES & MARKETING DIRECTOR

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## PART II

### "HEAVYCON" Standard Transportation Contract

1. Definitions	1	seafarers' and/or lashed by the Owners at their expense to the satisfaction of the Master and Warranty Surveyor.	66
In this Contract the following words and expressions shall have the meanings hereby assigned to them.	2	4.3. At the loading port, the cargo shall be delivered by the Charterers without delay in the sequence required by the Master as a time during daylight hours or	67
1.1. "The Owners" shall mean the party identified in Box 2.	3	night, Saturdays, Sundays and holidays included and shall be loaded by	70
1.2. "The Charterers" shall mean the party identified in Box 3.	4	one or more of the following methods stated in Box 4:	71
1.3. "The Vessel" shall mean the transportation unit(s) described in Box 4.	5	(a) If agreed in Box 4 that the Charterers shall load the cargo with their own	72
1.4. "Loading port" shall mean the port(s) or area(s) specified in Box 6.	6	gear or tackle, the Charterers shall bring the cargo alongside within reach of	73
1.5. "Discharging port" shall mean the port(s) or area(s) specified in Box 7.	7	each loading equipment. The Owners shall procure the necessary labour and	74
1.6. "The Cargo" shall mean any goods or equipment or other items described in Box 5.	8	and winchmen, either from the crew or from shore and shall pay for area	75
1.7. "The Transportation" shall mean the carriage of the cargo and, as the case may be, the loading, discharge and all other operations connected therewith.	9	sweep that may be required upon the Vessel by local or union regulations shall be for the Charterers' account.	76
	10	(b) If agreed in Box 4 that the Charterers shall perform the loading, the	77
2. Voyage	11	cargo shall be placed on board and positioned by the Charterers to the full	78
2.1. It is agreed between the Owners mentioned in Box 2 and the Charterers mentioned in Box 3 that, subject to the terms and conditions of this Contract, the cargo described in Box 5 shall be transported by the Owners from the	12	satisfaction of the Master. The Charterers shall procure and pay for all labour and all necessary equipment other than that stated in Box 4.	79
loading port(s) mentioned in Box 6, or so near thereto as she may safely get and be always safe and afloat, to the discharging port(s) mentioned in Box 7, or so near thereto as she may safely get and be always safe and afloat, by means of the Vessel named and described in Box 4 or in an appendix.	13	(c) If agreed in Box 4 that the cargo shall be loaded by means of boat on	80
2.2. At the commencement of the voyage the Charterers shall exercise due diligence in making the Vessel seaworthy. The Owners shall perform the voyage with due dispatch unless otherwise agreed.	14	method, the Charterers shall position the cargo prior to loading at 60 metres	81
	15	or an agreed distance from the Vessel's submerged deck to the full satisfaction of the Master. The Owners shall lash lashing to the cargo and shall	82
3. Deviation/Delay/Port Cargo	16	position and secure the cargo over the scummed deck by using winches and	83
3.1. The Vessel has the liberty in said without pilots, and, subject to the Charterers' approval which shall not be unreasonably withheld, to tow and/or assist vessels in all situations, to deviate for the purpose of saving life, to replenish bunkers and/or to deviate for the purpose of safety of the cargo, crew, Vessel and for any other reasonable purpose. However, excepting in the case of deviation caused for the purpose of ensuring safety of the cargo, no demurrage charges shall be payable.	17	and/or lugs. The Owners shall procure and pay the necessary labour and winchmen either from the crew or from shore except that any shore labour forced upon the Vessel by local or union regulations shall be for the Charterers' account.	84
3.2. Without prejudice to the provisions of Clause 3.1, should the Master decide, for the purpose of the safety of the cargo, to deviate from the normal route which is stipulated in Box 7, the Charterers shall pay for all time lost as a consequence of the deviation and the demurrage rate stipulated in Box 18. The time lost shall include all time used until the Vessel reaches the point of equivalent position to that where the deviation commenced and the Charterers shall also pay all additional expenses incurred by such deviation including bunkers, port charges, pilotage, tug boats, agency fees and any other expenses whatsoever incurred.	18	The Charterers shall procure and pay for workboats and tugs required for the positioning of the cargo. The Owners shall have the right to use such workboats and tugs for the loading operation, reimbursing the Charterers for the actual cost for the use thereof from the time the Vessel's first tug is attached to the cargo until the time when the last tug is released from the cargo and the workboats and tugs are dismissed by the Owners.	85
3.3. If the Vessel for reasons beyond the Owners' control is being delayed at loading port(s) or place(s) and/or discharging port(s) or place(s), including obtaining free pratique, customs, port clearance or other formalities, such delays shall be paid for by the Charterers at the demurrage rate stipulated in Box 18.	19	(d) Indicate alternative(s) (a), (b) or (c), as agreed, in Box 4.	86
3.4. Unless the cargo is described as a full and complete cargo in Box 5, the Owners shall have the liberty of restoring the cargo and of loading and of discharging other part cargo(es) for the account of others than the Charterers from places remote or not remote to places remote or not remote. The notation of loading and discharging places shall be at the Owners' option.	20	4.4. The precise discharging area or place within the discharging port and which shall be always safe and accessible and suitable for the discharging operation, shall be named by the Charterers with the approval of the Vessel's arrival, always subject to the approval of the Owners. Such approval shall not be unreasonably withheld.	87
When the Owners exercise such option(s) this shall in no way constitute a deviation, notwithstanding anything else contained in this Contract.	21	At the discharging port the Charterers shall take delivery of the cargo without delay in accordance with Clause 4.3, at any time during daylight hours or night, Sa-	88
4. Loading and Discharging	22	turdays, Sundays and holidays included.	89
4.1. The Charterers shall have the cargo in all respects ready for the said voyage at the loading port(s) on the date for which notice of expected loading is given by the Owners as per Clause 3, but not before the date stated in Box 10 as first layday.	23	4.5. Prior to actual discharge the Owners shall, unless otherwise agreed, remove all sea fastenings and/or lashing and prepare the Vessel for the discharge operation. The entire discharge operation always to be done to the full satisfaction of the Master.	90
The precise loading area or place within the agreed loading port, which shall be always safe and accessible and suitable for the loading operation, shall be named by the Charterers upon receipt of the first notice given by the Owners pursuant to Clause 3, always subject to the approval of the Owners and the Master. Such approval shall not be unreasonably withheld.	24	4.6. The cargo shall be discharged by one or more of the following methods stated in Box 4:	91
4.2. The Owners shall provide the equipment stated in Box 4 or in an appendix and shall in their own time and at their own expense prepare such equipment for the loading. All other equipment required for exhibiting, stowage, lashing, guide poles and struts shall be provided by the Charterers/Owner. The Charterers shall arrange and pay for any necessary lashing gear for loading and positioning of the cargo (loading other items, blocks, etc.) belonging to the vessel. When the cargo has been loaded and positioned, it shall be	25	(a) If agreed in Box 4 that the Charterers shall discharge the cargo with their own gear or tackle, the Charterers shall take delivery of the cargo upon discharge and within reach of said gear or tackle. The Owners shall procure and pay for necessary winches and labour to perform the discharge except that any shore labour forced upon the Vessel by local or union regulations shall be for the Charterers' account.	92
	26	(b) If agreed in Box 4 that the Charterers shall discharge the cargo, the Charterers shall procure and pay for the necessary equipment and labour for the discharge of the cargo. Owners shall remove all sea fastenings and lashings prior to discharge at their own expense.	93
	27	(c) If agreed in Box 4 that the cargo shall be discharged by means of boat on	94
	28	method, the Charterers shall submerge the Vessel and load off the cargo. The Owners shall procure and pay for the necessary labour and winchmen either from the crew or from shore except that any shore labour forced upon the Vessel by local or union regulations shall be for the Charterers' account.	95
	29	The Charterers shall procure and pay for workboats and tugs required for the positioning of the cargo. Owners shall remove all sea fastenings and lashings prior to discharge at their own expense.	96
	30	(d) Indicate alternative(s) (a), (b) or (c), as agreed, in Box 4.	97
	31	4.7. All expenses associated with the Vessel such as harbour dues, pilotages, local tug assistance, if required, agency fees, fuel and lubricants shall	98
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## PART II

### "HEAVYCON" Standard Transportation Contract

be paid for by the Owners except as otherwise provided in this Contract.	136	Box 13.	205
<b>5. Permits/Licenses</b>	137	<b>10. Marine Surveyor/Condition of the Vessel and Cargo</b>	206
5.1. All necessary permits and/or licenses pertaining to the loading and/or discharging operations shall be provided and paid for by the Charterers.	139	10.1. The Marine Surveyor(s) stated in Box 14 will be appointed for the transportation. If Box 14 has not been filled in the Charterers and the Owners shall agree on the appointment of Marine Surveyor(s) acceptable to the cargo underwriters.	207
The same applies to permits and/or licenses pertaining to the carriage of cargo. If required, the Charterers shall assist the Charterers in obtaining such permits and/or licenses.	140	10.2. All relevant documentation required by the Marine Surveyor(s) for their approval of the transportation shall be submitted by the Charterers to the Marine Surveyor at the earliest possible stage after this Contract is made, that already submitted earlier. As soon as possible after submission of the relevant documentation, transportation approval shall be given by the Marine Surveyor. The Charterers shall provide to the Owners and pay all expenses relating to the production of documentation related to the cargo and/or the Charterers' equipment. The Owners shall pay all expenses relating to documentation related to the Vessel and all other equipment being provided by the Owners for the performance of the transportation.	208
5.2. Any delay by the Charterers in obtaining the permits and/or licenses related to sub-clause 5.1, shall be at the Charterers' time and any time lost shall be paid for at the demurrage rate stipulated in Box 18.	142	10.3. The Charterers shall arrange and pay for all the Marine Surveyor(s) services, including their approval of the transportation.	210
<b>6. Taxes, Charges, etc.</b>	143	10.4. Should the Marine Surveyor(s) not give transportation approval by the date specified in Box 14, the Charterers and the Owners may elect to terminate the Contract and all freight paid or advanced by the Charterers to the Owners shall be promptly refunded.	211
The Charterers shall pay all duties, taxes and charges whatsoever levied on the cargo and/or the freight at the loading port and/or discharging port irrespective of how the amount thereof may be assessed, including agency commission assessed on the basis of the freight.	144	10.5. The Charterers warrant that the full description of the cargo mentioned in Box 5, and as further already provided to Owners in correspondence is presently correct and further warrant that the cargo is in all respects light, strong, stowable and secure for the transportation. The Charterers further warrant that any future changes to the description of the cargo between now and the time of loading will be advised to the Owners in a timely manner.	212
<b>7. Quarantine</b>	145	Should the cargo and/or its description not be in compliance with the aforesaid information provided prior to arrival of their vessel at the loading port, then the Owners shall have the option to cancel this Contract. If the Owners exercise their option to cancel the Contract in accordance with this Clause the Charterers shall pay to the Owners the applicable termination fee according to the provisions of Clause 20.	213
Unless due to health conditions on board the Vessel, any time lost as a result of quarantine formalities or health restrictions imposed or incurred at any stage of the voyage, including any such loss of time at the loading port and/or the discharging port, shall be paid for by the Charterers at the demurrage rate specified in Box 18. The Charterers shall also pay for all other expenses which may be incurred as a result thereof.	146	<b>11. Freight</b>	214
<b>8. Commencement of Loading/Canceling Date</b>	147	The freight stipulated in Box 15 shall be paid in installments as per Additional Clause 34 following 10% upon signing of this Contract and the balance shall be fully prepaid upon completion of loading against counter of the Cargo Receipt Bills of Lading, whether the same may be the B/L or the instrument of the freight shall be considered fully and irrevocably earned when due as set out in Box 16.	215
8.1. The date of commencement of the loading shall be at any time on or between the first layday stated in Box 10 and the canceling date stated in Box 11, both dates inclusive, in the Charterers' option. Should the Owners give notice of readiness prior to the first layday, the Charterers may, at their option, accept such an earlier loading date and the time used shall count against the free time as per Clause 12.	148	upon completion of loading and shall be non-refundable whether the Vessel and/or cargo is lost or not lost and whether lost due to perils of the sea or whatsoever. The freight installments shall be paid discountless and be telegraphically remitted in the currency and paid into the Owners' bank account stipulated in Box 16.	216
8.2. Should it clearly appear that the Vessel will not be ready to commence the loading latest on the canceling date the Charterers shall immediately notify the Charterers hereof and state a new canceling date as soon as they are in a position to state with reasonable certainty such new canceling date. Within 72 hours after receipt of the Owners' notice as aforesaid and latest when the Vessel is ready for loading, whichever is the earlier, the Charterers shall advise the Owners whether they wish to cancel this Contract, listing such advice and the new canceling date as notified by the Owners shall apply.	149	<b>12. Free Time/Damurrage</b>	217
8.3. Should the Charterers cancel the Contract according to sub-clause 8.2, any amount paid to the Owners in advance and not earned shall be returned to the Charterers by the Owners.	150	12.1. The Charterers are allowed the free time stipulated in Box 17 in the loading and discharging port(s) and for canal transit if applicable, Fridays, Saturdays, Sundays and holidays included. The free time at the loading port(s) shall start counting 6 hours after the notice of readiness has been tendered, in accordance with Clause 9.2.	218
8.4. The Charterers shall not be responsible for any loss or damages whatsoever incurred by the Charterers as a result of the Charterers canceling this Contract as per sub-clause 8.2; nor shall the Owners be responsible for any loss or damages whatsoever suffered by the Charterers as a result of the failure of the Vessel to be ready for loading latest on the canceling date agreed in Box 11 in the case that a new canceling date has been agreed.	151	Whether in berth or not, unless loading has commenced earlier and shall count until the first time for the first on cargo is in all respects fully stowed on board the Vessel and approved by the Marine Surveyor(s). has been taken by the vessel.	219
8.5. Should the cargo for reasons beyond the Owners' control, with the exception of bad weather, not be loaded within 48 hours from tendering of notice of readiness, the Owners shall have the option to cancel this Contract.	152	The free time at the discharging port(s) shall start counting 6 hours after the notice of readiness has been tendered in accordance with Clause 9.2.	220
If the Charterers exercise their option to cancel the Contract in accordance with this sub-clause, the Charterers shall pay to the Owners the applicable termination fee according to the provisions of Clause 20 in addition to any demurrage incurred.	153	Whether in berth or not, unless discharge has commenced earlier and shall count until the cargo is in all respects removed from the Vessel approximately 50% clear from the Vessel.	221
<b>9. Notices</b>	154	If the Owners are to load and discharge the cargo in accordance with Clauses 4.1, (a) or (b) and 4.2, (a) or (b) free time or time on demurrage shall not count for time used for the actual loading and discharge operation in excess of the fixed hours stipulated in Box 17 of Part I, unless such time used in excess of the fixed time is due to reason beyond the Owners' control.	222
9.1. Advance Notices of Expected Readiness	155		
The Owners shall give notice as per Box 12 of the expected day of the Vessel's readiness to load 14 (fourteen) days, 7 (seven) days and 3 (three) days in advance. Furthermore, the Owners shall give 24 (twenty-four) hours approximate notice of the expected hour of the Vessel's readiness to load.	156		
9.2. Notice of Readiness	157		
The Owners shall give notice of readiness by letter, cable, telex or telephone as per Box 12 after the vessel has arrived, advising when the Vessel is ready to commence loading at the loading port and when the Vessel is ready to commence discharge at the discharging port as per Box 13. All notices may be given anytime between 0900 and 1700 hrs local time of the day. Fridays, Saturdays, Sundays and holidays included and notwithstanding hindrances as referred to in Clause 3.3.	158		
9.3. During the voyage the Charterers shall give notice of expected time of arrival at discharging port(s) with intervals of the number of days stipulated in	159		

## PART II

### "HEAVYCON" Standard Transportation Contract

12.2. Demurrage shall be payable for all time used in excess of the free time.	263	and accessible port where there are facilities for loading or discharging the	331
The demurrage rate for the Vessel is the amount stipulated in Box 12 calcu-	264	cargo. In this event, freight shall be paid at the rate applicable under the	332
lated per day or pro rata for part of a day.	265	Contract to such alternative loading or discharging port and, in addition, any	333
12.3. Free time shall not count and if the Vessel is on demurrage, demurrage	266	period by which the time taken to reach either or both such alternative ports	334
shall not accrue for time lost by reason of strike or lockout of the Master,	267	exceeds the time which would have been taken had the Vessel proceeded	335
officers or crew or by reason of breakdown of the Vessel or the Owners'	268	either direct shall be paid for by the Charterers at the rate of demurrage	336
equipment in this event, Owners shall reimburse Charterers for any	269	specified in Box 12 per running day and pro rata for part of a running day as	337
additional costs that they may incur in having flags or other support		well as the costs of any additional bunkers consumed. If no rate of freight is	338
vessels standing by and waiting for the Vessel to be ready to load or		specified in Box 12 for the selected alternative port, then freight shall be	339
discharge.		paid at the rate applicable for the voyage first nominated adjusted by elapse-	340
12.4. The demurrage and other amounts which are calculated at the demur-	270	ance at the demurrage rate specified in Box 12 for the difference in time	341
rage rate (all due and are payable by the Charterers immediately upon pre-	271	taken for the actual voyage and the estimated time required to perform the	342
sensation of the Owners' invoice to the Owners' bank account stipulated in	272	first nominated voyage, the costs of the difference in bunker oil consump-	343
Box 16.	273	tion and the difference, if any, in port charges at the respective ports.	344
Should more than 14 days of demurrage have accrued, the Owners are en-	274	16.2. If on or after the Vessel's arrival at or off the nominated loading port or	345
itled to demurrage on account. The Owners may demand payment against	275	discharging port there is a danger of the Vessel being frozen in, the Master	346
presentation of invoices covering the first 14 days and thereafter for every 7	276	shall be at liberty to proceed to the nearest safe and ice-free position and	347
days.	277	shall, at the same time, request the Charterers by radio for revised orders.	348
		Immediately upon receipt of such request, the Charterers shall give orders	349
13. Mobilisation/Demobilisation	278	for the Vessel to proceed to an alternative safe, ice-free and accessible port	350
13.1. Mobilisation	279	where there is no danger of Vessel being frozen in and where there are facil-	351
As agreed upon in Box 16 the Charterers shall pay the lump sum stipulated	280	ities for loading or discharging the cargo.	352
therein in respect of mobilisation, which amount shall be earned and non-	281	If the Vessel is ordered to proceed to an alternative port, the sum in respect	353
refundable upon the Vessel's arrival in the loading port.	282	of freight and delay to be paid by the Charterers shall be as specified in sub-	354
13.2. Demobilisation	283	clause 16.1, but if the Vessel loads or discharges at the nominated port	355
As agreed upon in Box 20 the Charterers shall pay the lump sum stipulated	284	then the whole of the time occupied from the time the Master's request for	356
therein in respect of demobilisation, which amount shall be earned and	285	revised orders has been received by the Charterers until completion of loa-	357
refundable upon the Vessel's arrival at the discharging port.	286	ding or discharging shall count against free time or, if the Vessel is on de-	358
13.3. The mobilisation and demobilisation amounts shall be payable	287	demurrage, for demurrage. Any delay caused by reasons of the Vessel being	359
against the Owners' invoice.	288	ordered to a port where there is danger of being frozen in shall count against	360
		free time or, if the Vessel is on demurrage, for demurrage.	361
14. Canal Transit	289	16.3. The Vessel not to be obliged to force its way nor to follow icebreakers.	362
14.1. If the transportation is scheduled to pass through a canal according to	290		
Box 2, the Charterers are granted free time for any such transit, and such	291	17. Dangerous Cargo	363
free time shall count against the number of hours stipulated in Box 17. If the	292	If part of the cargo is of an inflammable, explosive or dangerous nature or	364
transportation is delayed beyond the free time stipulated therein, the Char-	293	condition or at any stage may develop into such nature or condition it must	365
terers shall pay for such extra transit time at the rate of demurrage stipu-	294	be packed and stowed or secured in accordance with IBCO Dangerous Goods	366
lated in Box 18 and shall, in addition, pay for all other documented extra ex-	295	Code and/or other applicable regulations always to the full satisfaction of	367
penses thereby incurred. Canal transit time is defined as from arrival at pi-	296	the Master. Any delay to the transportation in this respect shall be paid for	368
lot station or customary waiting place or anchorage, whichever is the ear-	297	by the Charterers at the demurrage rate stipulated in Box 12.	369
lier, and until dropping last redoubt point when leaving for the open sea.	298		
14.2. The freight rate stipulated in Box 15 is based upon the Owners paying	299	18. Lien	370
canal tolls based in the amount stipulated in Box 21. Any increase in the ca-	300	The Owners shall have a lien on the cargo and any Charterers' equipment	371
nal tolls and/or any additional expenses imposed on the transportation for	301	for all freight and all other expenses in relation to the transportation, dead-	372
the canal transit actually paid by the Owners shall be reimbursed by the	302	weight, advances, demurrage, damages for detention, general average and	373
Charterers to the Owners upon presentation of the Owners' invoice.	303	sealage including costs for reworking same.	374
14.3. Should the transit of a canal be made impossible for reasons beyond	304		
the Owners' control, the Charterers shall pay for all extra time by which the	305	19. Substitution	375
voyage is thereby prolonged at the rate of demurrage stipulated in Box 12.	306	The Owners shall, at any time before the cancelling date, be entitled to sub-	376
The Charterers shall also pay all other expenses, including for bunkers, in	307	stitute the Vessel named in Box 4 with another vessel of equivalent capaci-	377
addition to those which would normally have been incurred had the Vessel	308	ty and capacity, provided such substitute vessel is approved by the	378
been standing by in port less the amount of canal tolls being refunded to the	309	Charterers and Mar-	
Owners for not having transited the canal.	310	ine Surveyor. Nothing herein shall be construed as imposing on the Owners	379
14.4. Notwithstanding the provisions of sub-clause 14.3, the Owners may, at	311	an obligation to make such substitution.	380
their sole discretion, instruct the Master to discharge the cargo at the near-	312		
est safe and accessible port or place and such discharge shall be deemed	313	20. Termination	381
the fulfillment of the Contract. All provisions of this Contract regarding	314	20.1. Notwithstanding anything else provided herein, the Charterers shall	382
freight, discharge of the cargo, free time and demurrage as agreed for the	315	have the right to terminate this Contract prior to the Vessel's arrival at the	383
original discharging port shall also apply to the discharge at the substitute	316	first loading port against payment of the applicable amount stipulated in Box	384
port.	317	23 less any prepaid freight.	385
		20.2. Furthermore, the Charterers shall have the right to terminate this Con-	386
25. Bunker Escalation	318	tract after the Vessel's arrival at the first loading port but not later than upon	387
This Contract is concluded on the basis of the price per ton for bunker oil	319	commencement of loading against payment of the applicable amount stipu-	388
stated in Box 22 in force on the date of this Contract.	320	lated in Box 23 plus compensation for all time spent at the first loading port	389
If the price actually paid by the Owners for the stated quantity of bunker oil	321	at the demurrage rate stipulated in Box 12 less any prepaid freight together	390
con-		with the actual expenses incurred by the Owners in preparation for the loa-	391
tinued during the transportation should be higher, the difference shall be paid	322	ding.	392
by the Charterers to the Owners.	323	20.3. If Box 23 is not filled in, this Clause shall not apply.	393
If the price actually paid by the Owners for the stated quantity of bunker oil	324		
con-		21. Liability for Cargo - B/L of Loading or Cargo Receipt	394
tinued during the transportation should be lower, the difference shall be paid	325	21.1. Notwithstanding anything else contained herein, the Owners shall be	395
by the Owners to the Charterers.	326	liable for all loss or damage of whatsoever nature in or sustained by the Ves-	396
		sel, any liability in respect of wreck removal and the expense of raising,	397
26. Ice	327	fighting or burying the Vessel, and any liability in respect of death or injury	398
26.1. If the passage to the loading port or discharging port the Master finds	328	of any of the Owners' employees, servants, agents or sub-contractors' per-	399
that the port cannot be safely reached owing to ice, the Owners shall re-	329	sonnel, and any liability in respect of other cargo on board and the subject of	400
quest the Charterers to immediately nominate an alternative safe, ice-free	330	this Contract, all of which shall be for the sole account of the Owners without	401
		recourse to the Charterers, their servants or agents, and the Owners shall	402

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## PART II

### "HEAVYCON" Standard Transportation Contract

Indemnify, defend and hold the Charterers harmless from and against any and all claims, losses, costs, damages and expenses of every kind and nature including legal expenses arising from the foregoing.	403	1. Indicate alternative 21.4 (Bill of Lading) or 21.5 (Cargo Receipt), as agreed, in Box 24.	479		
21.2. Notwithstanding anything else contained herein, the Charterers shall be liable for all loss or damage or delay of whatsoever nature and whatsoever caused to or sustained by the cargo, including any property operated, owned, hired and/or leased by the Charterers on board, and any liability in respect of wreck removal and the expenses of mooring, lighting or burying the cargo, and any liability in respect of death or injury of any of the Charterers' employees, servants, agents or sub-contractors' personnel, or the Marine Surveyor(s) personnel, and all liabilities consequent upon loss, damage or delay to the cargo, all of which shall be for the sole account of the Charterers without recourse to the Owners, their servants or agents or insurers and the Charterers shall indemnify, defend and hold the Owners harmless from and against any and all claims, losses, costs, damages and expenses of every kind and nature including legal expenses arising from the foregoing.	404	22. Insurance	487		
21.3. The Owners and the Charterers shall agree and state in Box 24 whether a Bill of Lading or a non-negotiable Cargo Receipt will be issued by Charterers upon loading of the cargo.	405	22.1. Without prejudice to the Charterers' obligations and liabilities under this Contract, the Charterers shall take out and, in their name and at their expense, maintain at all material times and throughout the duration of this Contract a policy or policies of insurance in respect of all loss or damage to the cargo up to the full value of the cargo including but not limited to a policy or policies comprising All Risks cargo cover and cover against liabilities to third parties (including liability in respect of death and injury and claims for consequential loss), and wreck removal of the cargo. The Charterers shall arrange at their expense that the Owners shall be named as co-insured under the said policy or policies of insurance and arrange that the underwriters waive the right of subrogation. The Charterers hereby agree to produce the original certificates of insurance maintained hereunder to the Owners or their appointed representatives when requested so to do.	488	22.2. The Owners shall arrange at their expense such insurance(s) as required to protect the Charterers against the Owners' liabilities under Clause 21.1.	489
21.4. Bill of Lading	406	The Owners hereby agree to produce the original certificate(s) of insurance maintained hereunder to the Charterers or their appointed representatives when requested to do so.	490	23. Himalaya Cargo Clause	501
(a) It is stated in Box 24, the Owners have agreed to issue a Bill of Lading, which shall be for the "Heavycon" form which shall incorporate all terms, conditions, clauses, provisions and exceptions of this Contract, including the Arbitration Clause.	407	It is hereby expressly agreed that no servant or agent of the Owners (including every independent contractor from time to time employed by the Owners) shall in any circumstances whatsoever be under any liability whatsoever to the Shipper, Consignee or owner of the cargo or to any holder of the Bill of Lading for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on their part while acting in the course of or in connection with their employment and, but without prejudice to the generality of the foregoing provisions in this Clause, every exemption, limitation, condition and liability herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Owners or to which the Owners are entitled hereunder shall also be available and shall extend to protect every such servant or agent of the Owners acting as aforesaid and for the purpose of all the foregoing provisions of this Clause the Owners shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be their servants or agents from time to time (including independent contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to this Contract.	491	The Owners shall be entitled to the port by the Shipper, Consignee, owner of the cargo and/or Holder of the Bill of Lading who shall be jointly and severally liable to the Owners (hereby) on demand any sum recovered or recoverable by either such Shipper, Consignee, owner of the cargo and/or Holder of the Bill of Lading or any other from such servant or agent of the Owners for any such loss, damage, delay or otherwise.	502
(b) The Charterers shall not be liable for any loss, damage or delay to cargo in the period between loading and after discharging.	408	24. Both-to-Blame Collision Clause	526	If the Vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the Master, member, pilot or the servants of the Owners in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder will indemnify the Owners against all loss or liability to the other or non-carrying vessel or her Owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said cargo, paid or payable by the other or non-carrying vessel or her Owners to the owners of said cargo and set-off, recouped or recovered by the other or non-carrying vessel or her Owners as part of their claim against the carrying vessel or Owners.	527
(c) Unless otherwise agreed, the cargo shall be shipped on deck at Shipper's risk and the Charterers shall be responsible for any loss or damage or delay to the cargo whatsoever and whether due to negligence of whatsoever or howsoever arising and by whatsoever caused, and the Bill of Lading is issued hereunder shall be so clause.	409	The foregoing provisions shall also apply to the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision or contact.	528	25. General Average and New Jason Clause	542
(d) If the cargo is shipped under deck, the Cargo Receipt shall be clause as per sub-clause (a) above.	410	General Average shall be adjusted and settled at the place indicated in Box 25 according to the York/Antwerp Rules, 1974, or any modification thereof, but if, notwithstanding the provisions specified in Box 25, the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply:	543	"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, Owners are not responsible, by statute, contract or otherwise, the goods,	544
(e) The Cargo Receipt shall always be clause "All Risks Insurance has been placed for the full value of the cargo by the Charterers and in the name of the Charterers and the Owners."	411		545		546
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**PART II**  
**"HEAVYCON" Standard Transportation Contract**

shippers, consignees or owners of the goods shall contribute with Owners	552
in general average to the payment of any sacrifices, losses or expenses of a	553
general average nature that may be made or incurred and shall pay salvage	554
and special charges incurred in respect of the goods. If a salving Vessel is	555
owned or operated by Owners, salvage shall be paid for as fully as if the said	556
salving Vessel or vessels belonged to strangers. Such deposit as Owners,	557
or their agents, may deem sufficient to cover the estimated contribution of	558
the goods and any salvage and special charges thereon shall, if required,	559
be made by the goods, shippers, consignees or owners of the goods to	560
Owners before delivery.	561

2a. Strike

**20.1. Responsibility.** Neither the Chapters nor the Owners shall be responsible for the consequences of strike or lock-out preventing or delaying the fulfillment of any obligation under this Contract.

26.2. **Loading port.** In the event of strike or lock-out affecting the loading of the cargo, or any part of it, whilst the Vessel is ready to proceed from her berth or at any time during the voyage to the port or ports of loading or after her arrival there, the Owners may ask the Charterers to declare that they agree to commit the time as if there were no such hindrance. Unless the Charterers have given such declaration in writing (by telegram, if necessary) within 24 hours, the Owners shall have the option of cancelling this Contract. If part cargo has already been loaded, the Vessel must carry to the port of discharge, freight payable in full. Any savings or net profit in completing with other cargo shall be credited to the Charterers.

26.3. Expected strike. In the event of strike or lock-out which can reasonably be expected - before the loading has commenced - to affect the discharge of cargo, the Owners are at liberty to cancel this Contract unless the Charterers declare within 24 hours of receipt of Owners' notification of intended cancellation that they agree to count the time of discharge as if there were no such hindrance, without prejudice to the Charterers' right of ordering the vessel to a substitute port of discharge in accordance with sub-clause 26.4. Time for loading does not count in the said 24 hours.

26.4. Discharging port. In the event of strike or lock-out affecting the discharging of the cargo on another Vessel's arrival at or off the port of discharge, the Charterers shall have the option of keeping the Vessel waiting up to maximum 7 days against paying demurrage after the expiration of the time provided for discharging or of ordering the Vessel to a safe port where the cargo can safely discharge without risk of being detained by strike or lock-out. Such orders to be given within 48 hours after the Owners have given notice to the Charterers of Vessel's readiness to discharge or of the Owners' request for orders. After waiting 7 running days, the Owners shall be at liberty to discharge the cargo at any safe port which they may, in their discretion decide on and such discharge shall be deemed to be due fulfillment of the Contract. In the event of cargo being discharged at any such other port, the Owners shall be entitled to freight as if the discharge had been effected at the port or ports named in the B/L(s) of Lading or to which the Vessel may have been ordered pursuant thereto.

25-5. *Notification*. The party who first learns about the occurrence of strike or lock-out shall immediately notify the other party.

## 27. What Risks

2.1. to these causes "War Risks" shall include any blockade or any action which is announced as a blockade by any Government or by any belligerent, or by any organized body, including piracy, and any actual or threatened war, hostilities, warlike operations, civil war, civil commotion, or revolution.

17.2. That any time before the Vessel commences loading, it appears that performance of the Contract will subject the Vessel or her Master and crew to her cargo to war risks at any stage of the adventure, the Owners shall be obliged by letter or telegram despatched to the Charterers, to cancel this Contract.

7.2. The Master shall not be required to load cargo or to continue loading or to proceed on or to sign Bill(s) of Lading for any adventure on which any part of which it appears that the Vessel, her Master and crew or her cargo will be subjected to war risks, in the amount of the exercise by the Master of his right under this Clause after part or full cargo has been loaded, the Master shall be at liberty either to discharge such cargo at the loading port or to proceed unassisted. In the latter case the Vessel shall have liberty to carry other cargo for Owners' benefit and accordingly to proceed to and load or discharge such other cargo at any other port or ports whatsoever, at the order of or forwards, although in a contrary direction to or out of or beyond the ordinary route. In the event of the Master electing to proceed with part cargo under this Clause freight shall in any case be payable on the full cargo delivered.

14. If at the time the Master elects to proceed with part or full cargo under discharge 27.3, or after the Vessel has left the loading port, or the last of its loading ports, if more than one, it appears that further performance of the

Contract will subject the Vessel, her Master and crew or her cargo, to war risks, the cargo shall be discharged, and if the discharge has been commenced shall be completed, at any safe port in vicinity of the port of discharge as may be ordered by the Charterers. If no such orders shall be received from the Charterers within 48 hours after the Owners have dispatched a request by telegram to the Charterers for the nomination of a substitute discharging port, the Owners shall be at liberty to discharge the cargo at any safe port which they may, in their discretion, decide on; and such discharge shall be deemed to be due fulfilment of this Contract. In the event of cargo being discharged at any such other port, the Owners shall be entitled to freight as if the discharge had been effected at the port or ports named in the Bill(s) of Lading or in which the Vessel may have been ordered pursuant thereto.

22.5.(a) The Vessel shall have liberty to comply with any directions or recommendations as to loading, departure, arrival, routes, ports of call, stoppages, destination, zones, waters, discharge, delivery or in any other wise whatsoever (including any direction or recommendation not to go to the port of destination) or to delay proceeding thereto or to proceed to some other port given by any Government or by any belligerent or by any organized body engaged in civil war, hostilities or warlike operations or by any person or body acting or purporting to act as or with the authority of any Government or belligerent or of any such organized body or by any committee or person having under the terms of the war risks insurance on the Vessel, the right to give any such directions or recommendations. If, by reason of or in compliance with any such direction or recommendation, anything is done or is not done, such shall not be deemed a deviation.

It is, by reason of or in compliance with any such directions or recommendations, the Vessel does not proceed in the port or ports named in the Bill of Lading or to which she may have been ordered pursuant thereto, the Vessel may proceed to any port as directed or recommended or to any safe port which the Owners in their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the Contract and the Owners shall be entitled to freight as if discharge had been effected at the port or ports named in the Bill of Lading or to which the Vessel may have been ordered pursuant thereto.

27.5. All extra expenses including extra war risks insurance costs incurred to performance of the transportation and discharging of this cargo at the loading port or in re-loading or discharging the cargo at any port as provided in sub-clauses 27.4. and 27.5.(b) of this Clause shall be paid by the Charterers, and the Owners shall have a lien on the cargo for all sums due under this Clause.

## 28. Limitation of Liability

Any provisions of this Contract to the contrary notwithstanding, the Owners shall have the benefit of all limitations of, and exemptions from, liability accorded to the Owners or chartered Owners of vessels by any applicable statute or rule of law for the time being in force, and the same benefits to apply regardless of the form of signatures given to this Contract.

## 29. Interests

Any amounts due under this Contract are not paid when due, then interest at the rate of 1.5% per month or part of a month shall be paid on all such amounts until payment is received.

### 30. Agency

Vessel shall be addressed as Owners' address at port(s) of loading and dis-  
charging.

### 31. Brokenage

The Owner shall pay a brokerage of the rate stated in Box 26 to the Broker(s) mentioned in Box 26 on any freight, demurrage, or barge/dredge fee, and on any barge/dredge fee paid under this Contract.

### 32. Law and Arbitration

2. If agreed and stated in Box 27, this Contract shall be governed by English law and any dispute arising out of this Contract or any Bill of Lading shall be referred to the arbitration of the London Court of International Trade Arbitration.

and thereunder shall be referred to arbitration the High Court of Justice in London, and shall be

being appointed by each party in accordance with the Arbitration Act 1954 and 1950 or any statutory modification or amendment thereof for the time being in force. On the receipt by each party of the nomination in writing of the other party's arbitrator, that party shall appoint the arbitrator within ten days, failing which the decision of the single arbitrator appointed shall apply. If no arbitrator is properly appointed shall not apply. If one shall



**PART II**  
**"HEAVYCON" Standard Transportation Contract**

appeal in the event of a dispute shall be that,  
 32.2. If agreed and stated in Box 27, this Contract shall be governed by U.S.  
 law and all disputes arising out of this Contract or any Bill of Lading issued  
 thereunder shall be arbitrated in New York in the following manner:  
 One arbitrator is to be appointed by each of the parties herein and a third by  
 the two so chosen. That the sole effect of any two of them shall be final;  
 and for the purpose of reducing any award, this agreement shall be made a  
 rule of the court. The Arbitrators shall be compensated on a per diem basis  
 to be established in accordance with the rules of the Society of Maritime  
 Arbitrators, Inc., New York, as currently amended.  
 A sole arbitrator may be appointed, if so desired by both parties.

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Either party may call for arbitration by service of notice upon the other. If the  
 other party does not appoint its arbitrator within four days of such writ-  
 ten notice, then the first moving party shall have the right, without further no-  
 tice, to appoint a second arbitrator with the same fees and effects as said  
 second arbitrator had been appointed by the other party.  
 32.3. If agreed and stated in Box 27, any dispute arising out of this Contract  
 or any Bill of Lading issued thereunder shall be referred to arbitration at the  
 place indicated in Box 27, subject to the law and procedures applicable  
 there.  
 32.4. If Box 27 is not filled in, sub-clause 32.3. of this Clause shall apply.  
 3) Indicate arbitrators 32.1., 32.2. or 32.3., as agreed in Box 27.

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**ADDITIONAL CLAUSES:**

**33. CONTACT DETAILS:**

**OWNERS:**

CONTACT PERSON: MARIO KERSSENS OR DAVE HANCOCK

TEL: + 31 10 403 6333; FAX: + 31 10 403 6344

EMAIL: mario.kerssens@falconer.com or dave.hancock@falconer.com

**CHARTERS:**

CONTACT PERSON: JIM ECCLES or RICHARD WESTON

TEL: + 44 1224 332224; FAX: + 44 1224 625914

EMAIL: jeccles@e-n-group.com or rweston@e-n-group.com

**34. FREIGHT PAYMENT (SEE BOX 15 AND 16 AND CLAUSE 11)**

Should the entire freight not have been received in Owner's bank account by the time of the vessel's arrival at the discharging port, the Owners will have the right to delay the discharging operation, standing by, which stand by time will be charged at the demurrage rate, until the moment that the freight has been received in Owner's bank account.

**35. Notwithstanding what has been stated and / or agreed in Parts I and II of this contract, the following has been agreed and takes precedence over any other clauses and agreements in this contract:**

For the account of Owners will be:

- Cost for preparation of storage place, stability / mooring response analysis and a loading / transport manual
- Ballast engineers, time holders and supervision at the loading and discharge port
- Time required and cost for moving, unloading and re-lifting / moving, stowage as necessary to accommodate the vessel as per agreed storage plan
- Time required and cost for preparation of vessel's deck using standard cribbing wood
- Time required and cost for loading, lashing, unlash, unloading, discharging as per Owner's standards and criteria (compulsory tie-downing costs excluded) and as accepted by the stevedore supervisor
- Deck cleaning after discharge

For account of the Charterers will be:

- Any charges for tug boats needed to commence, execute and complete the loading and discharging operation and, if needed, during the lashing and unlash of the cargo
- Marine transport cargo insurance
- Cost for use of skidboards, if any
- Delays at the load and/or discharging ports / locations in excess of the granted free lay time if any, due to weather and/or sea conditions will be charged at the demurrage rate
- Any preparation of the cargo for transportation
- Any required carriage lifting gear for lifting, positioning, discharge of the cargo (loading other than, blocks, etc. belonging to the Vessel)

**36. CONFIDENTIALITY**

This contract and the terms hereof shall remain private and confidential to the signatories and the contents shall not be divulged to any third party except where necessary to comply with national regulations or the requirements of regulatory authorities. For Public relations purposes, aerial photographs only of the cargo on the deck of the vessel or photographs of the loading / discharging operation may be used. However disclosure of the any of the contents of this contract, freight or any other terms is strictly prohibited.

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## EXHIBIT 2

CODE NAME: "HEAVYCON RECEIPT"

Charterer

C & MARINE SERVICES USA INC  
308 CALDWELL STREET  
ERATH, LA. 70533

# NON-NEGOTIABLE CARGO RECEIPT

CR No.

Reference No.

Export References:

Notify address

C & MARINE GROUP / SERVICES LTD  
3RD FLOOR, REGENT CENTRE  
REGENT ROAD  
ABERDEEN, SCOTLAND U.K.

Forwarding Agent (Name and address):

PANALPINA INC. CHB 265A  
201 EVANS ROAD  
SUITE 301  
NEW ORLEANS, LA. 70123  
FMC 375 REF: MSY800504

Vessel

Port of loading

MV FJORD

PASCAGOULA, MS.

Port of discharge

NEWCASTLE UPON TYNE, UK

Charterer's description of goods

Gross weight

ICE MAIDEN

1 HULL W/TS COMPONENTS

10,930,584KGS

## TIB'S INCLUDED WITHIN

554-3079479-8 6 PCS 4KVA UPS UNITS  
554-3544011-4 4 PCS 6600V 2580KW GENERATORS  
554-3543752-4 8 PCS 6600V 50HZ MOTORS  
554-3079478-8 16 PCS SWITCHBOARDS / CONTROL PANELS  
554-9522286-4 2 PCS 6600V 50HZ MOTORS  
554-3079251-9 2 PCS TAUT WIRE SYS / JIB  
554-3047981-0 4 PCS ELEC TRANSFORMERS

THESE COMMODITIES, TECHNOLOGIES, OR SOFTWARE WERE EXPORTED  
EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH  
THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION  
CONTRARY TO U.S. LAW PROHIBITED

AES ITN X20080428043732

(a) Quantity carried on deck

"ALL CARGO CARRIED ON DECK".

(b) Quantity carried under deck

"NO CARGO CARRIED UNDERDECK"

Unless specifically indicated in (b) above, all cargo is carried on deck at Charterers' risk; the Owners not to be responsible for any loss or damage or delay to such cargo whatsoever and whether due to negligence of whosoever or howsoever arising and by whosoever caused.

Issued pursuant to

Freight payable in accordance with the Contract.

RECEIVED on board for carriage the goods as specified above  
according to Charterers' declaration in apparent good order and condition -  
unless otherwise stated herein - weight measure, marks, numbers, quality  
contents and value unknown.

This document only serves as a Cargo Receipt as per Clause 21.5. of the  
Contract of Carriage dated as indicated on the front page of this Cargo Receipt.

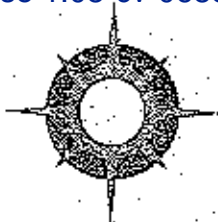
FOR FURTHER DETAILS SEE OVERLEAF

Place and date of issue

PASCAGOULA, MS.

Signature

## EXHIBIT 3



**Fairstar**

Conradstraat 26  
5th Floor, Suite E&L70  
3012 AP Rotterdam  
The Netherlands

P.O. Box 2225  
3000 CE Rotterdam  
The Netherlands

t +31 (0)10 403 53 33  
f +31 (0)10 403 53 44  
e fairstar@fairstar.com  
i www.fairstar.com

C&M GROUP LTD  
ATTN. MR. JIM ECCLES  
5-19 HOLLAND STREET  
ABERDEEN AB25 3UJ  
ABERDEENSHIRE  
SCOTLAND

**INVOICE**

Number 2008007  
Date 30 June 2008  
Regarding Shipment of MV Ice Maiden I Mobile/Newcastle or Belfast

We herewith charge your account as follows:

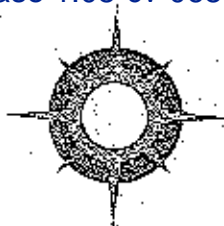
Project related cost, arranged and paid by Fairstar for and on behalf of C&M Group Limited, see attached specification	USD 46,972
Price difference fuel, see attached calculation	USD 57,600
Demurrage, see attached calculation	USD 396,875
Total	<b><u>USD 501,447</u></b>

Our bank details:

HSN Nordbank AG  
Account no: 1100308277  
IBAN: DE 12 2105 0000 1100 3082 77  
SWIFT: HSHNDEHH  
In favour of Fairstar Heavy Transport N.V.

Kindly indicate following reference:  
2008007/30062008/0356

**FAIRSTAR HEAVY TRANSPORT N.V.**



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6th Floor, Suite E6.170  
3013 AP Rotterdam  
The Netherlands

P.O. Box 2225  
3000 CE Rotterdam  
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f +31 (0)10 403 53 44  
e [fairstar@fairstar.com](mailto:fairstar@fairstar.com)  
i [www.fairstar.com](http://www.fairstar.com)

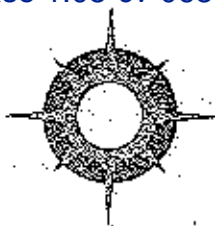
**Fairstar**

**PRICE DIFFERENCE FUEL**

Point 22 clause 15: USD 479 MT / fixed 3,600 mt

Actual price as per attached:	USD 495.00
Price per contract:	USD 479.00
Difference	USD 16.00

Fixed 3,600 mt x USD 16,00 =	<b><u>USD 57,600.00</u></b>
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**Fairstar**

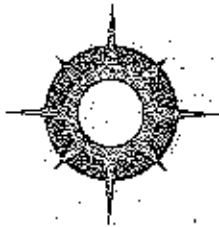
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e [fairstar@fairstar.com](mailto:fairstar@fairstar.com)  
i [www.fairstar.com](http://www.fairstar.com)

**PROJECT RELATED COSTS**

Extra Insurance costs pit rental	USD 5,000.00
Administration fee 10%	USD 500.00
Pit rental	USD 150,000.00
Handling fee 5%	USD 7,500.00
Weather Routing Service MWS	USD 892.50
Administration fee 10%	USD 89.25
Stand-by boat "Dolfijn" (€ 17,920.00)	USD 28,224.25
Administration fee 10%	USD 2,822.43
Berthage SHEPPARD Quay NC	USD 1,943.76
Total project related costs	USD 196,972.19
Pit rental already invoiced (see our invoice 2008006 dated 23 May 2008)	USD -150,000.00
Total project related costs (this invoice)	<b><u>USD 46,972.19</u></b>



**Fairstar**

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www.fairstar.com

## DEMURRAGE

### Contract

4 days free	Load location
3 days free	Discharge location
2 days free	Sales discount
9 days free	Total

### LT = UTC - 0500 hrs

Pascagoula	28-4-2008	0600 hrs lt
4 days free time	2-5-2008	0600 hrs lt
Sallaway Mobile	4-5-2008	1100 hrs lt

Demurrage USA 2 days and 5 hrs

### LT = UTC - 0200 hrs

New castle	23-5-2008	1200 hrs lt
3 free days	26-5-2008	1200 hrs lt
2 free days offer sales	28-5-2008	1200 hrs lt
CoR Rotterdam	31-5-2008	1500 hrs lt

Demurrage Europe 3 days and 2 hrs

Total demurrage 5 days and 7 hrs

Demurrage per day USD 75,000

Total demurrage USD 396,875

## EXHIBIT 4





3. I submit based on the foregoing that the Defendants cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims.

4. Upon information and belief, the Defendants have, or will have during the pendency of this action, tangible and intangible property within this District and subject to the jurisdiction of this Court, held in the hands of in the hands of garnishees within this District, which are believed to be due and owing to the Defendants.

**PRAYER FOR RELIEF FOR ORDER ALLOWING SPECIAL PROCESS SERVER**

5. Plaintiff seeks an Order pursuant to Rule 4(c) of the Federal Rules of Civil Procedure, for an Order appointing Patrick F. Lennon, Kevin J. Lennon, Charles E. Murphy, Nancy Peterson or any other partner, associate, paralegal or agent of Lennon, Murphy & Lennon, LLC, or any process server employed by Gotham Process Servers, be and is hereby appointed, in addition to the United States Marshal, to serve the Process of Maritime Attachment and Garnishment and/or the Verified Complaint, together with any interrogatories, upon the garnishee(s), together with any other garnishee(s) who (based upon information developed subsequent hereto by the Plaintiff) may hold assets of, for or on account of, the Defendants.

6. Plaintiff seeks to serve the prayed for Process of Maritime Attachment and Garnishment with all deliberate speed so that it may be fully protected against the potential of being unable to satisfy a judgment/award ultimately obtained by Plaintiff and entered against the Defendants.

7. To the extent that this application for an Order appointing a special process server with respect to this attachment and garnishment does not involve a restraint of physical property, there is no need to require that the service be effected by the Marshal as it involves simple

delivery of the Process of Maritime Attachment and Garnishment to the various garnishes to be identified in the writ.

**PRAYER FOR RELIEF TO SERVE LATER IDENTIFIED GARNISHEES**

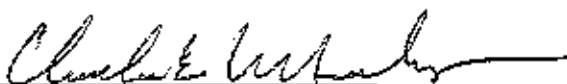
8. Plaintiff also respectfully requests that the Court grant it leave to serve any additional garnishee(s) who may, upon information and belief obtained in the course of this litigation, to be holding, or believed to be holding, property of the Defendants, within this District. Obtaining leave of Court at this time to serve any later identified garnishees will allow for prompt service of the Process of Maritime Attachment and Garnishment without the need to present to the Court amended Process seeking simply to identify other garnishee(s).

**PRAYER FOR RELIEF TO DEEM SERVICE CONTINUOUS**

9. Further, in order to avoid the need to repetitively serve the garnishees/banks, Plaintiff respectfully seeks further leave of the Court, as set out in the accompanying Ex Parte Order for Process of Maritime Attachment, for any process that is served on a garnishee to be deemed effective and continuous service of process throughout any given day on which process is served through the next day, provided that process is served the next day, to authorize service of process via facsimile or e-mail following initial *in personam* service.

17. For the foregoing reasons, Plaintiff requests that the Court issue an Order temporarily sealing the court file in this matter, including the Verified Complaint and all other pleadings and Orders filed and/or issued herein until further notice of this Court or notification to the clerk that property has been attached.

18. This request is narrowly tailored to meet Plaintiff's needs. Once property is attached, the case should be unsealed, as the interest underlying sealing the case will have been largely eliminated.

  
Charles E. Murphy

Sworn and subscribed to before me  
This 31<sup>th</sup> day of July 2008.

  
Notary Public/Commissioner of Superior Court